

# **EXHIBIT 6**

Scully, Thomas A.

May 15, 2007

Washington, DC

Page 1

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

- - - - -x

IN RE: PHARMACEUTICAL : MDL NO. 1456

INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION

PRICE LITIGATION : 01-CV-12257-PBS

THIS DOCUMENT RELATES TO :

U.S. ex rel. Ven-a-Care of : Judge Patti B. Saris

the Florida Keys, Inc. :

v. :

Abbott Laboratories, Inc., : Chief Magistrate

No. 06-CV-11337-PBS : Judge Marianne B.

- - - - -x Bowler

Henderson Legal Services  
202-220-4158

Scully, Thomas A.

May 15, 2007

Washington, DC

<p style="text-align: right;">Page 2</p> <p>1 IN THE CIRCUIT COURT OF</p> <p>2 MONTGOMERY COUNTY, ALABAMA</p> <p>3 -----X</p> <p>4 STATE OF ALABAMA, :</p> <p>5 Plaintiff, :</p> <p>6 vs. : Case No.: CV-05-219</p> <p>7 ABBOTT LABORATORIES, INC., : Judge Charles Price</p> <p>8 et al. :</p> <p>9 Defendants. :</p> <p>10 -----X</p> <p>11</p> <p>12 STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY</p> <p>13 -----X</p> <p>14 STATE OF WISCONSIN, : CASE NO.</p> <p>15 Plaintiff, : 04-CV-1709</p> <p>16 v. :</p> <p>17 AMGEN INC., et al., :</p> <p>18 Defendants. :</p> <p>19 -----X</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 4</p> <p>1 IN THE COURT OF COMMON PLEAS</p> <p>2 FIFTH JUDICIAL CIRCUIT</p> <p>3 -----X</p> <p>4 STATE OF SOUTH CAROLINA, and : STATE OF</p> <p>5 HENRY D. McMASTER, in his official : SOUTH CAROLINA</p> <p>6 capacity as Attorney General for : COUNTY OF</p> <p>7 the State of South Carolina, : RICHLAND</p> <p>8 Plaintiff, :</p> <p>9 v. : CIVIL ACTION NO.</p> <p>10 WARRICK PHARMACEUTICALS : 2006-CP-40-4390</p> <p>11 CORPORATION, et al. : 2006-CP-40-4399</p> <p>12 Defendants. :</p> <p>13 -----X</p> <p>14 STATE OF SOUTH CAROLINA, and : STATE OF</p> <p>15 HENRY D. McMASTER, in his official : SOUTH CAROLINA</p> <p>16 capacity as Attorney General for : COUNTY OF</p> <p>17 the State of South Carolina, : RICHLAND</p> <p>18 Plaintiff, :</p> <p>19 v. : CASE NO.</p> <p>20 ABBOTT LABORATORIES, INC. : 2006-CP-40-4394</p> <p>21 Defendant. :</p> <p>22 -----X</p>
<p style="text-align: right;">Page 3</p> <p>1 UNITED STATES DISTRICT COURT</p> <p>2 DISTRICT OF MASSACHUSETTS</p> <p>3 -----X</p> <p>4 THE COMMONWEALTH OF MASSACHUSETTS : CIVIL ACTION NO</p> <p>5 Plaintiff, : 03-CV-11865-PBS</p> <p>6 v. :</p> <p>7 MYLAN LABORATORIES, INC., et al. :</p> <p>8 Defendants. :</p> <p>9 -----X</p> <p>10</p> <p>11 SUPERIOR COURT OF NEW JERSEY</p> <p>12 UNION COUNTY</p> <p>13 -----X</p> <p>14 CLIFFSIDE NURSING HOME, INC., on : LAW DIVISION</p> <p>15 behalf of itself and all others : DOCKET NO.</p> <p>16 similarly situated, as defined : UNN-L-2329-04</p> <p>17 herein, :</p> <p>18 Plaintiffs, :</p> <p>19 v. :</p> <p>20 DEY, INC., et al. :</p> <p>21 Defendants. :</p> <p>22 -----X</p>	<p style="text-align: right;">Page 5</p> <p>1 IN THE COURT OF COMMON PLEAS</p> <p>2 FIFTH JUDICIAL CIRCUIT</p> <p>3 -----X</p> <p>4 STATE OF SOUTH CAROLINA, and : STATE OF</p> <p>5 HENRY D. McMASTER, in his official : SOUTH CAROLINA</p> <p>6 capacity as Attorney General for : COUNTY OF</p> <p>7 the State of South Carolina, : RICHLAND</p> <p>8 Plaintiff, :</p> <p>9 v. : CIVIL ACTION NO.</p> <p>10 PAR PHARMACEUTICALS COMPANIES, : 2006-CP-40-7151</p> <p>11 INC., : 2006-CP-40-7153</p> <p>12 Defendant. :</p> <p>13 -----X</p> <p>14 STATE OF SOUTH CAROLINA, and : STATE OF</p> <p>15 HENRY D. McMASTER, in his official : SOUTH CAROLINA</p> <p>16 capacity as Attorney General for : COUNTY OF</p> <p>17 the State of South Carolina, : RICHLAND</p> <p>18 Plaintiff, :</p> <p>19 v. : CIVIL ACTION NO.</p> <p>20 MYLAN LABORATORIES INC., : 2007-CP-40-0282</p> <p>21 Defendant. : 2007-CP-40-0283</p> <p>22 -----X</p>

2 (Pages 2 to 5)

Henderson Legal Services  
202-220-4158

Scully, Thomas A.

May 15, 2007

Washington, DC

<p style="text-align: right;">Page 6</p> <p>1 IN THE COURT OF COMMON PLEAS 2 FIFTH JUDICIAL CIRCUIT 3 -----X 4 STATE OF SOUTH CAROLINA, and : STATE OF 5 HENRY D. McMASTER, in his official : SOUTH CAROLINA 6 capacity as Attorney General for : COUNTY OF 7 the State of South Carolina, : RICHLAND 8 Plaintiff, : 9 v. : CIVIL ACTION NO. 10 BARR PHARMACEUTICALS, INC. : 2007-CP-40-0280 11 Defendant. : 2007-CP-40-0286 12 -----X 13 14 IN THE CIRCUIT COURT OF THE FIRST CIRCUIT 15 STATE OF HAWAII 16 -----X 17 STATE OF HAWAII, : CASE NO. 18 Plaintiff, : 06-1-0720-04 EEH 19 v. : 20 ABBOTT LABORATORIES, INC., et al. : JUDGE EDEN 21 Defendants. : ELIZABETH HIFO 22 -----X</p>	<p style="text-align: right;">Page 8</p> <p>1 IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS 2 STATE OF MISSOURI 3 -----X 4 STATE OF MISSOURI, ex rel, : 5 JEREMIAH W. (JAY) NIXON, : 6 Attorney General, : 7 and : 8 MISSOURI DEPARTMENT OF SOCIAL : 9 SERVICES, DIVISION OF MEDICAL : Case No. 10 SERVICES, : 054-1216 11 Plaintiffs, : Division No. 31 12 vs. : 13 DEY INC., DEY, L.P., MERCK KGaA, : 14 EMD, INC., WARRICK : 15 PHARMACEUTICALS CORPORATION, : 16 SCHERING-PLOUGH CORPORATION, and : 17 SCHERING CORPORATION, : 18 Defendants. : 19 -----X 20 21 22</p>
<p style="text-align: right;">Page 7</p> <p>1 IN THE COURT OF THE SECOND JUDICIAL CIRCUIT 2 IN AND FOR LEON COUNTY, FLORIDA 3 THE STATE OF FLORIDA 4 ex rel. 5 -----X 6 VEN-A-CARE OF THE FLORIDA : 7 KEYS, INC., a Florida : 8 Corporation, by and through its : 9 principal officers and directors, : 10 ZACHARY T. BENTLEY and : 11 T. MARK JONES, : 12 Plaintiffs, : 13 vs. : Civil Action 14 MYLAN LABORATORIES INC.; MYLAN : No.: 98-3032G 15 PHARMACEUTICALS INC.; NOVOPHARM : Judge: William 16 LTD., SCHEIN PHARMACEUTICAL, INC.;; L. Gary 17 TEVA PHARMACEUTICAL INDUSTRIES : 18 LTD., TEVA PHARMACEUTICAL USA; : 19 and WATSON PHARMACEUTICALS, INC., : 20 Defendants. : 21 -----X 22</p>	<p style="text-align: right;">Page 9</p> <p>1 COMMONWEALTH OF KENTUCKY 2 FRANKLIN CIRCUIT COURT - DIV. II 3 -----X 4 COMMONWEALTH OF KENTUCKY, : CIVIL ACTION NO. 5 Plaintiff, : 03-CI-1134 6 v. : 7 ABBOTT LABORATORIES, INC., et al. : 8 Defendants. : 9 -----X 10 11 COMMONWEALTH OF KENTUCKY 12 FRANKLIN CIRCUIT COURT - DIV. I 13 -----X 14 COMMONWEALTH OF KENTUCKY, ex rel. : CIVIL ACTION NO. 15 GREGORY D. STUMBO, Attorney General: 04-CI-1487 16 Plaintiff, : 17 v. : 18 ALPHAPHARMA, INC., et al. : 19 Defendants. : 20 -----X 21 Washington, D.C. 22 Tuesday, May 15, 2007</p>

3 (Pages 6 to 9)

Henderson Legal Services  
202-220-4158

Scully, Thomas A.

May 15, 2007

Washington, DC

<p style="text-align: right;">Page 10</p> <p>1 Videotaped Deposition of THOMAS A.  2 SCULLY, a witness herein, called for examination by  3 counsel for Abbott Laboratories in the above-entitled  4 matter, pursuant to subpoena, the witness being duly  5 sworn by SUSAN L. CIMINELLI, a Notary Public in and  6 for the District of Columbia, taken at the offices of  7 Jones Day, 51 Louisiana Avenue, Northwest,  8 Washington, D.C., at 8:49 a.m. on Tuesday, May 15,  9 2007, and the proceedings being taken down by  10 Stenotype by SUSAN L. CIMINELLI, CRR, RPR, and  11 transcribed under her direction.  12  13  14  15  16  17  18  19  20  21  22</p>	<p style="text-align: right;">Page 12</p> <p>1 APPEARANCES (continued):  2  3 On behalf of the U.S. Department of  4 Health and Human Services:  5 TROY A. BARSKY, ESQ.  6 U.S. Department of Health and Human Services  7 CMS Division  8 C2-05-23  9 7500 Security Boulevard  10 Baltimore, MD 21244-1850  11 (410) 786-8873  12 troy.barsky@hhs.gov  13  14 On behalf of the State of California:  15 NICHOLAS N. PAUL, ESQ.  16 Supervising Deputy Attorney General  17 Civil Prosecutions Unit  18 P.O. Box 85266  19 110 West A Street, #1100  20 San Diego, CA 82186  21 (619) 688-6099  22 nicholas.paul@doj.ca.gov</p>
<p style="text-align: right;">Page 11</p> <p>1 APPEARANCES:  2  3 On behalf of the United States of America:  4 GEJAA T. GOBENA, ESQ.  5 JOHN K. NEAL, ESQ.  6 ANDREW MAO, ESQ.  7 U.S. Department of Justice  8 Civil Division  9 601 D Street, Northwest  10 PHB - 9028/P.O. Box 261  11 Washington, D.C. 20044  12 Gejaa.Gobena@usdoj.gov  13 (202) 307-1088  14  15  16  17  18  19  20  21  22</p>	<p style="text-align: right;">Page 13</p> <p>1 APPEARANCES (continued):  2  3 On behalf of the State of Alabama:  4 ROGER BATES, ESQ.  5 Hand Arendall, L.L.C.  6 1200 Park Place Tower  7 2001 Park Place North  8 Birmingham, AL 35203  9 (205) 502-0105  10 Rbates@handarendall.com  11  12 On behalf of the State of Florida:  13 MARY S. MILLER, ESQ.  14 Office of the Attorney General of Florida  15 PL-01, The Capitol  16 Tallahassee, FL 32399-1050  17 (850) 414-3600  18 Mary_Miller@oag.state.fl.us  19  20  21  22</p>

4 (Pages 10 to 13)

Henderson Legal Services  
202-220-4158

Scully, Thomas A.

May 15, 2007

Washington, DC

<p style="text-align: right;">Page 274</p> <p>1 Q. Page 99. Near the -- about two-thirds of 2 the way down, you say, "it is not an easy solution. 3 I spent four hours the other day with probably 10 4 people at CMS that have worked on this for the 5 longest time." Do you see that? I mean, the 6 sentence continues, but do you see that language? 7 A. Yes. 8 Q. I was wondering if you can identify for us 9 any of those 10 people. 10 A. Well, two I mentioned already. Ira Bernie 11 was probably always the key guy driving the CMS 12 internally, works in the office of legislative 13 affairs. 14 Q. Is he still with CMS? I'm sorry to 15 interrupt. 16 A. Has been for 30 years. Most incredibly 17 complex policies come from Ira over the years, 18 probably half your litigation. Second person, 19 believe it or not, in the small world category, is 20 Erin Clapton, who has also been there for years. And 21 her husband Chuck Clapton is the chief counsel in 22 this committee and is still the minority counsel on</p>	<p style="text-align: right;">Page 276</p> <p>1 remember every staff person that worked on it, the 2 senior staff people I think I've mentioned. It was 3 an area of pretty intense focus for a while. 4 (Exhibit Abbott 188 was 5 marked for identification.) 6 BY MR. DALY: 7 Q. Mr. Scully, I'm handing you what the court 8 reporter has marked as Exhibit Abbott 188, which is a 9 copy of what I believe is your prepared testimony 10 before the Senate Finance Health Care Committee on 11 March 14, 2002. And do you recognize it to be such? 12 A. Yes. 13 Q. And did you write this? 14 A. Probably not. 15 Q. Okay. 16 A. Probably reviewed it, maybe threw a few 17 sentences here and there. Probably drafted by staff. 18 Q. Did you review this in preparation for 19 your deposition? 20 A. No. I may have looked through it briefly. 21 I probably had a copy. 22 Q. Okay.</p>
<p style="text-align: right;">Page 275</p> <p>1 Ways and Means. 2 So she works in CMS policy office and her 3 husband was the primary guy driving this in Congress. 4 So it was a lot -- somebody I've known for years, so 5 I would say those two -- of the 10, you know, there 6 is quite a bit of staff people. I can't remember all 7 the names that probably worked on this. Probably Tom 8 Gustafson, Tom Grissam, Ira and Erin, were probably 9 the four I can remember the most clearly involved in 10 this. Rob Forman probably was involved in it as my 11 head of legislative affairs at CMS probably was also 12 in there. 13 Q. Later on in your testimony, we can find 14 it, but I think you mentioned maybe as many as 15 15 people. Are those -- is that -- 16 A. Same basic. 17 Q. Anybody else that you can recall that 18 would be in this area of knowledge about having 19 worked on the AWP issue for a number of years within 20 CMS? 21 A. It was a big staff. I mean, I had staff 22 meetings the size of this to discuss this. I can't</p>	<p style="text-align: right;">Page 277</p> <p>1 A. Not in this format. Anyway. 2 Q. On page 2 of the document, you mentioned 3 in the second full paragraph, about two-thirds of the 4 way through it, that under BIPA, which provided some 5 authority for the Secretary to act after reviewing 6 the General Accounting Office report to Congress, 7 "under BIPA, we could move to a market-based system 8 or drugs and adjust payments for services related to 9 furnishing drugs such as practice expenses for 10 oncology administration." Do you see that? 11 A. Yes. 12 Q. And can you explain what that means? 13 A. No, I probably -- I can't remember 14 precisely, but I'm thinking it probably means is we 15 have the authority to actually save money in drugs 16 arguably, and this is a new legal argument, I think, 17 that I had gotten since the first testimony, because 18 I was trying to find ways to threaten to fix it 19 administratively if I couldn't get Congress to act. 20 I believe at one point, I got some 21 discretion or at least a reading of BIPA from my 22 attorneys, I may be wrong about this, but I believe</p>

70 (Pages 274 to 277)